

MILAN S. PAPULAK

IBLA 76-680

Decided April 18, 1977

Appeal from two decisions of the Utah State Office, Bureau of Land Management, rejecting appellant's noncompetitive oil and gas lease offers (U-32290 and U-32292) in part.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Description! ! Oil and Gas Leases: Description of Land

An oil and gas lease offer will not be rejected on the basis of a defective land description merely because some of the land applied for is not available for leasing where the offeror has submitted advance rental for all of the land described. Generally, where an offer describes an entire section and only part of that land is available for leasing, a lease will be issued for the land available and the offer rejected for the balance of the land in the section.

2. Oil and Gas Leases: Applications: Description! ! Oil and Gas Leases: Description of Land

The description of an entire section of land modified by the word "available" in an oil and gas lease application is an offer to lease all of that section, subject to availability for leasing. An offer containing such a description need not be rejected for lack of a legally sufficient description where the offer is accompanied by the required rent for all of the land described therein.

APPEARANCE: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from two decisions of the Utah State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas lease offers (U-32290 and U-32292) in part because of the failure of the appellant to describe all of the surveyed public domain applied for in the lease offers by legal subdivision in accordance with 43 CFR 3101.1-4(a). Appellant's lease offers described certain of the lands applied for by giving the section number followed by the words: "All available." The BLM found this manner of description deficient for failure to identify the land by legal subdivision.

Counsel for appellant raises several contentions on appeal. First, counsel alleges that the applications were, in effect, made for all of the land in the sections. The form for noncompetitive public domain oil and gas lease on which the offers are filed contains a statement that the applicant "offers to lease all or any of the lands described in item 2 that are available for lease." Thus, it is argued that appellant merely restated this term of the application when he used the words "all available" instead of the word "all" to describe the land applied for in a section. Counsel alleges that the BLM would have issued the leases for the available lands in the sections in question if the offeror had omitted the word "available."

Secondly, counsel cites the case of William B. Collister, 71 I.D. 124 (1964), in support of his contention that the Department has never rejected lease offers because the land description identifies some land which is not available for leasing as well as land which is subject to leasing. Rather, it is argued, the practice of the BLM has been to reject the offer as to that part of the land described which is unavailable and issue a lease for the remainder. It is contended that this rule applies when the description of the section is followed by the words "all available." Further, appellant's counsel alleges that any defects as to the rental submitted and the acreage embraced in the offers are curable without loss of priority under 43 CFR 3111.1-1(e).

Appellant's noncompetitive public domain lease offer designated U-32290 contained the following description of the lands applied for and the advance rental submitted under items 2 and 4 of the application:

2. Land requested: State Utah, County Cache, T. 10N : R. 4E: S.L. Meridian,

Sec. 22: All
 Sec. 27: All available
 Sec. 31: NENE
 Sec. 33: All
 Sec. 34: All

Total Area 2480 Acres

* * * * *

4. Amount remitted: * * * Rental \$ 1200 * * *.

Lease offer U-32292 contained the following entries under items 2 and 4 of the application:

2. Land requested: State Utah, County Rich and Cache, T. 10N : R. 4E : S.L. Meridian,

Sec. 23: All available
 Sec. 24: SESE
 Sec. 25: All available
 Sec. 26: All available
 Sec. 35: All

Total Area 2480 Acres

* * * * *

4. Amount remitted: * * * Rental \$ 1200 * * *.

The survey plat for the township involved discloses that most of the land described in both of the lease offers is surveyed public domain. The master title plat reveals that certain tracts of land in each of the sections for which application is made for "all available" lands are patented lands not available for leasing.

According to the survey plat, sections 22, 27, 33, and 34 of T. 10 N., R. 4 E., Salt Lake Mer., described in lease offer U-32290 are regular sections containing 640 acres. The NE 1/4 NE 1/4 of Sec. 31, also described in the application, is a 40 acre quarter! quarter section. Thus, the acreage of all land described in lease offer U-32290, if the designation "all available" land is considered to be an application for the entire section, is 2,600 acres.

The survey plat further discloses that all of the sections involved in offer U-32292 are regular 640! acre sections. Thus, if the notation "all available" is assumed to be an application for the

entire section, the total acreage described in the lease offer is also 2,600 acres.

The regulation governing the legal requirements for description of the land in an oil and gas lease offer for surveyed public domain land provides as follows:

§ 3101.1-4 Description of lands in offer.

(a) Surveyed lands. If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range.

43 CFR 3101.1-4.

The issue presented is whether an oil and gas lease offer for surveyed public domain describing the land applied for as "all available" land in a given section complies with the requirement of the regulations that the land be described by legal subdivision, section, township, and range.

[1] An oil and gas lease offer does not contain a defective land description requiring rejection of the offer merely because some of the land applied for is not available for leasing where the offeror has submitted advance rental for all of the land described. Arthur E. Meinhart, A-30665 (March 30, 1967); L. B. Smith, A-30447 (October 29, 1965); William B. Collister, *supra*, Charles J. Babington, 71 I.D. 110 (1964). The general practice where a qualifying offer describes an entire section of land, and only part of that land is available for leasing, is to issue a lease as to the land that is available and reject the offer for the balance of the land in the section. William B. Collister, *supra*; see Charles J. Babington, *supra*. This is consistent with the intent of the lease offeror, as stated on the lease form, to lease any and all of the lands described which are available for lease. See John Oakason, 21 IBLA 185 (1975).

[2] The identification of a section of land coupled with the expression "all available" constitutes, by the ordinary meaning of the words, an offer to lease all of the land in the given section if that is available or all land which is open to leasing if some of the land is not subject to leasing. The legal effect of this description is the same as a description of all of the land in a given section (for example, "Sec. 25: All") without addition of the modifying term "available." The terms of the noncompetitive oil and gas lease itself (Form 3120-3) provide that the applicant "offers to lease all or any of the lands described * * * that are available for lease * * *." Thus, in legal effect, both descriptions constitute an offer to lease all of the land available for leasing within a given section. This Department has in the past

been unable to conclude that the use of the term "available" in an otherwise proper description of all the land in a given section is a ground for holding the description to be legally insufficient where advance rental is submitted for the entire section. William B. Collister, *supra* at 126.

This raises the question of whether a sufficient payment of advance rental was submitted with the lease offers. As an actual acreage of 2,600 acres 1/ was embraced in each offer, the advance rental required was \$ 1,300. 43 CFR 3103.3-2(a) (1976). 2/ Although the rental submitted for each was only \$ 1,200, the deficiency is less than 10 per cent of the total rent due and therefore is a curable defect. 43 CFR 3111.1-1(e). If appellant had not submitted legally sufficient rental, within the limits of a curable deficiency, rejection of the offer would be required.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded for further adjudication consistent with this decision.

Anne Poindexter Lewis
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge

1/ Noncompetitive public domain oil and gas lease offers are limited to 2,560 acres except where the rule of approximation applies. 43 CFR 3110.1-3. However, an excess of acreage not more than 10 percent over the amount allowable is a curable defect. 43 CFR 3111.1-1(e).

2/ This regulation has since been amended to provide for a rental of \$ 1.00 per acre for noncompetitive leases issued on or after February 1, 1977. 42 F.R. 1033 (January 5, 1977.)

